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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/584,298

06/23/2006

Hiroyuki Ichiyama

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03/22/2010

WENDEROTH, LIND & PONACK, L.L.P.

1030 15th Street, N.W.,

Suite 400 East

Washington, DC 20005-1503

EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

NOTIFICATION DATE

DELIVERY MODE

03/22/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ddalecki@wenderoth.com

coa@wenderoth.com

Office Action Summary	Application No. 10/584,298	Applicant(s) ICHIYAMA ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rek for reasons of record as further evidenced by Swern (page 318) and as further evidenced by Potter (page 147).

Rek discloses a blend of butter fat and palm kernel oil with improved whipping and creaming properties. The preparation of a mélange as oil in water emulsion is mentioned in claim 8 of Rek. Fat blends containing butter fat to palm kernel fat ratios of down to 65:35 are disclosed at Table II. Evidence for the fatty acid content of palm kernel oil shown in Swern to meet the requirements for the non milk fat component of the claim 1. The photo degradation resistance would have been expected from the composition of Rek,

Applicant has amended the claims to include the content of nonfat milk solids and the amount of fat in the composition. Rek discloses

whippable butter in example 4. Here 70% dairy cream is combined with an artificial cream containing palm kernel oil in skimmed milk. Both the dairy and non dairy fat are included at the 40% level so the fat in the total composition. Nonfat milk solids would be expected in skim milk. Potter is relied upon to show the solids not fat (nonfat milk solid) content of cows milk (Table 41). One of ordinary skill in the art would expect the mélange of Rek to contain nonfat milk solids in the range of the claims.

Applicant argues that he is using non-milk fat. This has been considered but is not persuasive. The claims call for non milk fat or non milk fat and milk fat in lines 2-3 of claim 1. The fatty acid content of palm kernel oil is shown by Swern to meet the requirements for the non milk fat component, as required by the claim. The claims are not commensurate in scope with applicants' arguments.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Rek for reasons of record (4,350,715) as further evidenced by Swern (page 318) and further as evidenced by Potter (page 347).

Rek discloses a blend of butter fat and palm kernel oil with improved whipping and creaming properties. The preparation of a mélange as oil in water emulsion is mentioned in claim 8 of Rek. Fat blends containing butter fat to palm kernel fat ratios of down to 65:35 are disclosed at Table II. Evidence for the fatty acid content of the palm kernel oil is shown in Swern to meet the requirements for the non milk fat component of claim 1. The photo degradation resistance would have been expected from the composition of Rek.

Applicant has amended the claims to include the content of nonfat milk solids and the amount of fat in the composition. Rek discloses whippable butter in example 4. Here 70% dairy cream is combined with an artificial cream containing palm kernel oil in skimmed milk. Both the dairy and non dairy fat are included at the 40% level so the fat in the total composition. Nonfat milk solids would be expected in skim milk. Potter is relied upon to show the solids not fat (nonfat milk solid) content of cows

milk (Table 41). One of ordinary skill in the art would expect the mélange of Rek to contain nonfat milk solids in the range of the claims.

Applicant argues that his is using non-milk fat. This has been considered but is not persuasive. The claims call for non milk fat or non milk fat and milk fat in lines 2-3 of claim 1. The fatty acid content of palm kernel oil is shown by Swern to meet the requirements for the non milk fat component, as required by the claim. The claims are not commensurate in scope with applicant's arguments.

Claims 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rek for reasons of record as further evidenced by Swern and Potter as applied to claims 1, 3 and 4 above, and as further evidenced by Potter.

The claims appear to differ from Rek as further evidenced by Swern and Potter in the recitation of "preventing photo degradation. Potter is further cited for evidence that milk undergoes photooxidation when it is exposed to light. One of ordinary skill in the art would expect that a reduction in butter fat in the composition of Rek would act to reduce photo degradation in the composition. It is appreciated that prevention of photo degradation is not mentioned but Potter also teaches that packaging is also critical to the prevention of photo degradation in foods. One of ordinary

skill in the art would be expected to prevent photo degradation with appropriate packaging of foods.

Claims 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rek for reasons of record as further evidenced by Swern and Potter as applied to claims 1, 3, 4 above alone or if necessary in view of Arcadipane (5,393,551).

The claims appear to differ from Rek in the recitation of the inclusion of tocopherol. Tocopherol is well known in the art as a vitamin and as an antioxidant. If further evidence for the inclusion of tocopherol in foods were required, one of ordinary skill in the art would only need to look to Arcadipane at Table 1, on column 10 wherein it shows fortification of milk with vitamin E or tocopherol. It would have been obvious to fortify the fat blend of Rek to upgrade its nutritional quality.

The rejection of the claims under 35 USC 112 has been withdrawn in response to applicants' amendments to the claims.

Claims 7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bundus (3,488,198) as further evidenced by Potter (page 127) and also Swern.

Bundus discloses filled milk. In example 1 the filled milk is made from skim milk, coconut oil and emulsifier. In this case the nonfat milk solids come from skim milk and Potter is relied upon to show the nonfat milk solids from milk. One of ordinary skill in the art would be able to calculate the extent of nonfat milk solids from the information provided by Potter and Bundus. The ratio of nonfat milk solids to fat would be expected to fall within the range of the claims because the fat content of the milk is so low. The non-milk fat in this case is coconut oil. Swern (page 315) is relied upon to show the fat composition of coconut oil as having the fatty acid composition required in the claims. The claims appear to differ from Bundus as further evidenced by Potter and Swern in the recitation that the emulsion is oil in water emulsion. One of ordinary skill in the art would expect the emulsion of Bundus to be oil in water emulsion because the fat content of the emulsion is so low. It is appreciated that the use of the product for blending or into a pudding is not mentioned but milk products are known in the art to be used in cooking for the preparation of other foods like pudding. The preparation of these foods would be expected to involve blending. It would have been obvious to one of ordinary skill in the art to expect the emulsion of Bundus to be oil in water emulsion that could be

used for blending into other ingredients for pudding preparation or to make bavarous or jelly.

Claim 7 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bundus (3,488,198) as further evidenced by Potter (page 127) and also Swern.

Bundus discloses filled milk. In example 1 the filed milk is made from skim milk, coconut oil and emulsifier. In this case the nonfat milk solids come from skim milk and Potter is relied upon to show the nonfat milk solids from milk. The skim milk of Bundus would be expected to contain nonfat milk solids in the amount set forth in the claims. Whole milk contains 9% nonfat milk solids as evidenced by Potter and skimmed milk is merely whole milk minus the fat. The ratio of nonfat milk solids to fat would be expected to fall within the range of the claims because the fat content of the milk in Bundus is so low. The non-milk fat in this case is coconut oil. Swern (page 315) is relied upon to show the fat composition of coconut oil as having the fatty acid composition required in the claims. One of ordinary skill in the art would also expect the emulsion of Bundus to be oil in water emulsion because the fat content of the emulsion is so low.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bundus as further evidenced by Swern and Potter as applied to claims 7, 9 and 10 above, and further in view of Arcadipane (5,393,551).

The claims appear to differ from Bundus in the recitation of the inclusion of tocopherol. Tocopherol is well known in the art as a vitamin and as an antioxidant. If further evidence for the inclusion of tocopherol in foods were required, one of ordinary skill in the art would only need to look to Arcadipane at Table 1, on column 10 wherein it shows fortification of milk with vitamin E or tocopherol. It would have been obvious to fortify the fat blend of Bundus to upgrade its nutritional quality.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794